

NEW YORK, NEW YORK  
DENVER, COLORADO

ARNOLD & PORTER

1200 NEW HAMPSHIRE AVENUE, N.W.  
WASHINGTON, D.C. 20036-6885

(202) 872-6700  
CABLE: "ARFOPO"  
FACSIMILE: (202) 872-6720  
TELEX: 89-2733

ORIGINAL  
FILE  
LOS ANGELES, CALIFORNIA  
TOKYO, JAPAN

RECEIVED

DEC 15 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

December 15, 1992

**BY HAND**

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Implementation of the Cable Television  
Consumer Protection and Competition  
Act of 1992--Cable Home Wiring  
MM Docket No. 92-260

Dear Ms. Searcy:

Please find enclosed on behalf of the National Association of Telecommunications Officers and Advisors, et. al., an original and 11 copies of Reply Comments of the National Association of Telecommunications Officers and Advisors, et. al. filed in MM Docket No. 92-260.

Any questions regarding the submission should be referred to the undersigned.

Sincerely,



Bruce A. Henoch

Enclosures

49  
SEARCHED  
SERIALIZED  
INDEXED  
FILED

RECEIVED

DEC 15 1992

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of the )  
Cable Television Consumer )  
Protection and Competition )  
Act of 1992 )

Cable Home Wiring )

MM Docket No. 92-260

TO: The Commission

REPLY COMMENTS OF THE  
NATIONAL ASSOCIATION OF TELECOMMUNICATIONS  
OFFICERS AND ADVISORS, THE NATIONAL  
LEAGUE OF CITIES, THE UNITED STATES  
CONFERENCE OF MAYORS, AND THE NATIONAL  
ASSOCIATION OF COUNTIES

The National Association of Telecommunications  
Officers and Advisors, the National League of Cities,  
the United States Conference of Mayors, and the National  
Association of Counties (collectively, the "Local  
Governments") submit these reply comments in the above-  
captioned proceeding.

I. INTRODUCTION

As stated in their comments in this proceeding,  
the Local Governments believe that the FCC should adopt  
rules establishing a presumption that the subscriber  
owns the home wiring upon the termination of cable  
service if: a) the subscriber has paid an installation

fee or other consideration or the installation fee was waived by the cable operator; b) the subscriber has maintained cable service for a reasonable minimum period, such as one year; or c) the franchise agreement specifies a reduced installation fee or no installation fee. These presumptions will help ensure that subscribers are not faced with new, unwarranted, and unexpected costs either at termination or through increased monthly rates, and will protect against disruption or damage to the subscriber's property as well as anticompetitive behavior.

The Local Governments are submitting these reply comments to respond to several parties who have urged the Commission to take actions that are either anticompetitive or arbitrary in nature. First, if the Commission should adopt the suggestion of some parties that the rules should only be applied "prospectively," that is to wiring installed after the effective date of the statute, the lion's share of home wiring in the nation would be excluded from the FCC's regulations. Second, the rules should not allow any additional costs to be imposed upon the subscriber. Third, the rules must make it clear that ownership of the wiring does not transfer to the subscriber until service is terminated, and the operator has sole responsibility through the

life of the cable subscription to maintain the wiring and protect against signal leakage. Finally, cable companies should have no discretion to retain ownership of home wiring upon a "belief" that theft of service might occur. Only termination of service because of an actual theft of service by the subscriber in question should be grounds for refusing to transfer ownership.

## II. DISCUSSION

### A. The FCC Rules Should Be Applied     To All Cable Home Wiring.

Several commenters have urged the Commission to apply the home wiring rules "prospectively," limiting their scope to cover only wiring installed after the effective date of the statute.<sup>1</sup> Instituting such a policy would effectively undermine Congressional intent to address an existing problem. Most of the nation is already wired for cable. Indeed, cable penetration now stands at 61 percent of American households.<sup>2</sup> Applying the rules to exclude all of the existing home wiring would mean that millions of subscribers would be left unprotected. There is no reason not to apply the rules

---

<sup>1</sup> See, e.g., Comments of the Community Antenna Television Association, at 3-4; Comments of Continental Cablevision, Inc., at 6; Joint Comments of Blade Communications, Inc., et al, at 3-4; Comments of Time-Warner Entertainment, Inc., at 19-21; and Comments of the Secretary of Defense, at 2.

<sup>2</sup> H.R. Rep. No 628, 102d Cong., 2d Sess., 29 (1992).

to wiring previously installed. The rules recommended by the Local Governments clearly respond to the concern that cable companies should have the opportunity to recover their costs--but having had that opportunity, cable companies should not be allowed to charge again for that wiring or prevent its later use by a competitor. Many other provisions of the 1992 Cable Act apply to existing subscribers; the home wiring rules should apply the same way.

A number of parties have suggested that applying the rules to existing subscribers would have the effect of interfering with prenegotiated contracts that already provide for the disposition of the cable. Realistically, however, this is of minimal concern. There is usually no real negotiation nor even the opportunity for arms length bargaining between the operator and subscriber when the contract is entered into; thus, no real bargained-for arrangements will be disrupted.

**B. The Rules Should Ensure That Subscribers are Not Faced With Additional Charges.**

The FCC should adopt rules that ensure that subscribers are not faced with new or additional charges. Several parties have filed comments on various points that, if adopted, could lead to such additional

charges. First, the FCC should disregard the comments of Multiplex Technology, Inc. insofar as they urge the Commission to adopt rules that would require operators to charge separate fees for cable service and cable wiring. The only effect of such a rule would be to impose new, unwanted, and unexpected charges upon subscribers. Second, the comments of Allen's TV Cable, et al, would similarly impose additional charges in that they would permit an operator to adopt a written policy of collecting compensation from individual terminating subscribers based upon the average unrecovered cost of installations or average cost of replacement, whichever is greater. These comments also seek to allow a "modest markup for transaction costs." As the Local Governments noted in their comments, in most situations the wiring has already been paid for at the time of termination, either through installation fees and/or monthly rates; thus, any such written policy based on average unrecovered cost of installation or replacement, plus a "modest markup," would result in a windfall to cable operators, and would impose an unjustified financial burden on subscribers.

The comments of Cablevision Systems Corporation would also add unwarranted expense to cable subscribers by allowing operators to require a security deposit that

would be refunded on a pro rata basis to reflect unrecovered costs of home wiring. Requiring a security deposit would have no effect other than adding another expense to the cost of subscribing to cable television. Operators either charge an installation fee or collect the installation expense through monthly rates. If a subscriber terminates his or her subscription before the operator recovers its costs, the operator could, if not doing so for anticompetitive reasons, seek to recover these expenses upon termination;<sup>3</sup> requiring a deposit would only place additional financial burdens on subscribers and create disincentives for new subscribers.

C. Cable Operators Must Retain Ownership of the Wiring Until Service is Terminated, and Must Maintain Wiring and Ensure Against Signal Leakage.

The Wireless Cable Association International, Inc. states in its comments that all wiring installed after the effective date of the new rules belongs to the

---

<sup>3</sup> As the Local Governments discussed in their comments in this proceeding, if a cable operator is expending an amount of resources to remove the wiring that exceeds the likely minimal value the operator could obtain from recovery of the used wires, it should be presumed that the operator is removing the wiring merely for anticompetitive reasons, *i.e.*, to prevent other companies from using the wiring. In this case, the operator should not be allowed to remove the wiring or force the subscriber to pay a separate charge in order to keep the wiring.

subscriber. This is incorrect. First, Section 16(d) contemplates rules dealing only with the disposition of wiring at the termination of service. Second, the operator must exercise ownership of the wiring during the period of subscription in order to maintain it and ensure against signal leakage. Otherwise, the operator might argue that, once ownership of the wiring transfers to the subscriber, so does this responsibility. The only party in a position to maintain adequately the wiring and prevent leakage is the operator; thus, the operator must retain ownership and responsibility until service is terminated.

D. Cable Operators Must Not Be Given Discretion to Retain Ownership of Wiring in Cases Where They Merely Believe That Theft of Service is Possible.

Continental Cablevision, Inc. urges the Commission to adopt rules that would give cable operators the right to refuse to allow acquisition of home wiring if the operator has reason to believe that there is a potential for theft of service. The comments go on to state that evidence of such belief could be that theft of service is detected in the building or neighborhood where the subscriber resides. This idea would give the cable operator virtually unlimited discretion in refusing to transfer ownership of wiring. Continental proposes that this rule should apply not



only where there is a reasonable belief that theft of service has occurred by this subscriber, but also where the operator has a belief that there is merely a potential for theft. Besides allowing for capricious decisionmaking on the part of cable operators, such a rule has the potential to have a discriminatory effect. The belief that there is the potential for theft of service by some living in a specific neighborhood should not be grounds for allowing the operator to refuse to transfer ownership of wiring to the hundreds of other innocent, paying customers residing nearby.

### III. CONCLUSION

The rules proposed by the Local Governments in their December 1st comments are fair to both subscribers and cable operators. However, in order for these rules to work effectively and fulfill Congressional intent, they must be applied to all existing subscribers. Further, the rules should not allow operators to impose additional unwarranted charges or eliminate their responsibility to maintain home wiring. The rules also should not permit operators to make arbitrary and discriminatory decisions concerning which subscribers would be prohibited from acquiring their wiring.

Respectfully submitted,

*Norman M. Sinel (B.A.H.)*

Norman M. Sinel  
Patrick J. Grant  
Stephanie M. Phillipps  
Bruce A. Henoeh

Arnold & Porter  
1200 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
(202) 872-6700

Counsel for  
Local Governments

Date: December 15, 1992